

No. 12056

United States
Court of Appeals
for the Ninth Circuit

GEORGE W. BOULTER and MARGRETTA L.
BOULTER,

Appellants,

vs.

COMMERCIAL STANDARD INSURANCE
COMPANY, a corporation,

Appellee.

SUPPLEMENTAL
Transcript of Record

Appeal from the United States District Court
for the Northern District of California,
Southern Division

In the Superior Court of the State of California,
in and for the City and County of San Francisco

No. 371,020

GEORGE W. BOULTER and MARGRETTA L.
BOULTER,

Plaintiffs,

vs.

COMMERCIAL STANDARD INSURANCE
COMPANY, a corporation,

Defendant.

NOTICE OF INTENTION TO FILE PETITION
AND BOND FOR REMOVAL OF CAUSE TO
THE UNITED STATES DISTRICT COURT
AND OF MOTION FOR ORDER FOR SUCH
REMOVAL

To George W. Boulter and Margretta L. Boulter,
Plaintiffs Above Named, and to Nathan G. Gray,
Attorney for Said Plaintiffs:

You and Each of You Will Hereby Take Notice
that the above named defendant, Commercial Stand-
ard Insurance Company, by its attorneys, Dana,
Bledsoe & Smith, will on Friday, the 19th day of De-
cember, 1947, at the hour of 3:15 o'clock p.m. of said
day, file in the above entitled court its verified peti-
tion and bond for removal of this cause from the
said Court to the District Court of the United States
for the Northern District of California, Southern
Division; a copy of each of said documents is here-
unto annexed.

You Are Further Notified that the said defendant,
by its attorneys, will on said 19th day of December,

1947, at the hour of 3:15 o'clock p.m., or as soon thereafter as counsel may be heard, at the courtroom of the above entitled court, in the County Court House, in the City and County of San Francisco, State of California, move the said court for an order approving the said verified petition and bond and removing this cause to the District Court of the United States for the Northern District of California, Southern Division, and directing the Clerk of said State Court to make up the record in said cause for transmission to said District Court.

Said motion will be based and heard upon the said verified petition and bond for removal of said cause, and will be made upon the grounds of the diversity of citizenship as appears from the said verified petition, and upon the propriety and sufficiency of the proceedings herein taken to effect such removal under the Federal Judicial Code.

Dated: December 18, 1947.

DANA, BLEDSOE & SMITH,
Attorneys for Defendant.

[Endorsed]: Filed Dec. 19, 1947.

[Title of Superior Court and Cause.]

PETITION FOR REMOVAL OF CAUSE TO
THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION

To the Honorable Superior Court of the State of
California, in and for the City and County of
San Francisco:

Petitioner appears herein especially for the sole purpose of this petition and not otherwise and such special appearance shall not be deemed to be a general appearance or a submission to the jurisdiction of this court to which your petitioner specifically reserves the right to object.

The petition of Commercial Standard Insurance Company respectfully shows:

I.

The above entitled action has been brought in this court and is now pending therein; the complaint in the above-entitled action was filed and summons was issued on November 19, 1947; your petitioner was served with a copy of said summons and complaint in the City and County of San Francisco, State of California, on December 10, 1947; the time within which said defendant is required to answer or otherwise plead has not yet expired.

II.

Said action is of a civil nature, arising from a judgment obtained by plaintiffs in a personal injury action against two defendants alleged to have been

insureds of your petitioner and this suit is upon an insurance policy issued by defendant petitioner.

III.

That the value of the matter in controversy exceeds the sum of \$3,000.00 exclusive of interests and costs; that plaintiffs pray for damages in the sum of \$5,118.76, together with interest thereon.

IV.

That at all times mentioned in said complaint and **at the time said action** was commenced, and at all **times since, and at the present time**, the defendant Commercial Standard Insurance Company, your petitioner, was and is a corporation duly organized and existing under and by virtue of the laws of the State of Texas; that at all times hereinabove mentioned said defendant, your petitioner was and is a citizen of the State of Texas; that plaintiffs at the commencement of this action were and at all times since have been citizens of the State of Oregon.

V.

Your petitioner has heretofore given notice to the plaintiffs of the filing of this petition and the bond for removal hereinafter mentioned.

VI.

Your petitioner presents herewith a good and sufficient bond as provided by the statute in such cases made and provided, that it will enter into the District Court of the United States for the Northern District of California, Southern Division, within thirty (30) days from the date of the filing of this

petition a certified copy of the record in this suit, and that it will pay all costs which may be awarded by the District Court in the event that the said court shall decide that this action was wrongfully or improperly removed thereto.

Wherefore, your petitioner prays that this court proceed no further herein except to order the removal, accept the bond herewith presented and direct a transcript of the record to be made for filing in the United States District Court aforesaid.

Dated: December 18, 1947.

DANA, BLEDSOE & SMITH,
Attorneys for Defendant.

(Duly Verified.)

[Endorsed]: Filed Dec. 19, 1947.

[Title of Superior Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITION FOR REMOVAL
OF CAUSE TO DISTRICT COURT
OF THE UNITED STATES

I.

Duty of Court to Accept Petition Together with Bond and Order of Removal.

“It shall be the duty of said court to accept said petition and bond and proceed no further in such suit.”

Judicial Code, Sec. 29, U.S.C.A. Title 28, Sec. 72, p. 395.

II.

The Controversy is Wholly Between Citizens of Different States and Petitioner is Entitled to Removal of Cause.

Judicial Code, Sec. 28, U.S.C.A. Title 28, Sec. 71, p. 3.

Respectfully submitted,

DANA, BLEDSOE & SMITH,
Attorneys for Petitioner-Defendant.

[Title of Superior Court and Cause.]

BOND ON REMOVAL

Know All Men By These Presents:

That Commercial Standard Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Texas, defendant in the above entitled suit, as Principal, and American Surety Company of New York, a corporation organized under the laws of the State of New York, as Surety, are held and firmly bound unto George W. Boulter and Margretta L. Boulter, plaintiffs above named, in the sum of Five Hundred and No/100 Dollars (\$500.00), lawful money of the United States for the payment whereof, well and truly to be made, we hereby bind ourselves, our successors, representatives and assigns, jointly and severally by these presents.

The Condition of This Obligation is Such, that whereas the said Principal has filed, or is about to file, its petition in the Superior Court of the State

of California, in and for the City and County of San Francisco, praying for the removal of a certain cause pending therein, as above entitled, wherein George W. Boulter and Margretta L. Boulter are the Plaintiffs, and the said Principal is defendant, to the Southern Division of the District Court of the United States for the Northern District of California;

Now, Therefore, if the said Principal shall enter in said District Court of the United States, within thirty (30) days from the filing of said petition for removal, a certified copy of the record in said suit, and also shall appear therein, and shall and truly pay all costs that may be awarded by the said District Court if said District Court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

In Witness Whereof, the said Commercial Standard Insurance Company, and the American Surety Company of New York have caused these presents to be executed this 18th day of December, 1947.

COMMERCIAL STANDARD INSURANCE COMPANY,

By DANA, BLEDSOE & SMITH,
Its Attorneys.

(Seal) AMERICAN SURETY COMPANY
OF NEW YORK,

By /s/ L. T. PLATT,
Res. Vice-Pres.

Attest:

/s/ M. L. BERTETTA,
Res. Asst. Secty.

Bond No. 35-472-233.

Premium \$10.00 per annum.

Approved:

GEORGE W. SCHOENFELD,
Presiding Judge of the Superior Court
Dec. 19, 1947.

[Affidavit of Service by Mail attached.]

[Endorsed]: Filed Dec. 19, 1947.

[Title of Superior Court and Cause.]

ORDER FOR REMOVAL OF CAUSE

This cause coming on for hearing upon the petition and bond of the defendant, Commercial Standard Insurance Company, herein, for an order transferring this case to the United States District Court for the Northern District of California, Southern Division, and it appearing to the court that the defendant, Commercial Standard Insurance Company, has given plaintiffs due and legal notice thereof;

And it appearing to the Court that this is a proper cause for removal to said District Court:

Now Therefore, said Petition and bond are hereby accepted, and it is hereby ordered and adjudged that this cause be and is hereby removed to the United

States District Court for the Northern District of California, Southern Division, and the Clerk is hereby directed to make up the record in said cause for transmission to said court forthwith.

Done in Open Court this 19th day of December, 1947.

GEORGE Q. SCHOENFELD,
Judge of the Superior Court.

[Endorsed]: Filed Dec. 19, 1947.

Filed Jan. 16, 1948. C. W. Calbreath, Clerk.

In the District Court of the United States, for the
Northern District of California, Southern
Division

No. 27,857-R

GEORGE W. BOULTER and MARGRETTA L.
BOULTER,

Plaintiffs and Appellants,
vs.

COMMERCIAL STANDARD INSURANCE
COMPANY, a corporation,

Defendant and Respondent.

REQUEST FOR SUPPLEMENTAL RECORD.
AND DESIGNATED PARTS OF RECORD
TO BE INCLUDED THEREIN

The plaintiffs and appellants above named do hereby respectfully request that the above entitled court make an order that a supplemental record

shall be certified and transmitted by the clerk of this court to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and plaintiffs and appellants hereby designate the following parts of the record which they deem necessary to be added to the record heretofore made up for the consideration of the points made in the appeal of this cause:

1. Judgment entered on July 9, 1948, on the verdict of the jury.

2. Petition for removal of cause to the United States District Court for the Northern District of California, Southern Division.

3. Notice of intention to file petition and bond for removal of cause to the United States District Court, and of motion for order for such removal.

4. Bond referred to in the foregoing notice.

5. Order for removal of cause.

Dated: December 17, 1948.

NATHAN G. GRAY,

Attorneys for Plaintiffs and Appellants, George W.
Boulter and Margretta L. Boulter.

The clerk of this court is hereby directed that a supplemental record of the above described documents be certified by him and transmitted to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: December 17, 1948.

/s/ MICHAEL J. ROCHE,

Judge of said United States District Court.

[Endorsed]: Filed Dec. 17, 1948.

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 14 pages, numbered from 1 to 14, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of George W. Boulter, et al., Plaintiffs, vs. Commercial Standard Insurance Company, a corporation, Defendant, No. 27857-R, as the same now remain on file and of record in my office.

I, further certify that the cost of preparing and certifying the foregoing Supplemental transcript of record on appeal is the sum of \$1.40, and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 17th day of December, A.D. 1948.

(Seal)

C. W. CALBREATH,
Clerk.

[Endorsed]: No. 12056. United States Court of Appeals for the Ninth Circuit. George W. Boulter and Margretta L. Boulter, Appellants, vs. Commercial Standard Insurance Company, a corporation, Appellee. Supplemental Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed December 17, 1948.

/s/PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.